THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE DR.G.YETHIRAJULU

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WRIT APPEAL NO.1198 OF 1999

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(DATED: 06.03.2006)

Between:

Fatima Girl High School, Porumamilla, Cuddapah Ditrict

Rep. By its Correspondent Sister Lawrance.

...Appellant/Petitioner

A n d

Government of Andhra Pradesh rep. By its Secretary

Education Department, Hyderabad & Another

…Respondents

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE DR.G.YETHIRAJULU

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JUDGMENT: (Per Hon'ble Sri Justice B.Prakash Rao)

Heard Sri E.Manohar, learned Senior Counsel appearing on behalf of the appellant herein and the learned Government Pleader for School Education appearing on behalf of respondent No.1 and Sri K.Raghuveer Reddy, learned counsel appearing on behalf of respondent No.2.

The appellant herein is the unsuccessful writ petitioner who seeks to assail the order dismissing the writ petition filed by it challenging the impugned proceedings in G.O.Rt.No.330, Education (PS.I) Department dated 17.10.1997 as per orders in W.P.No.28886 of 1997 dated 10.8.1999.

The facts in brief as necessary for disposal of this appeal are that the appellant, which is an Educational Institution claiming to be a minority one is managed by religious society of sisters of Jesus Mary and Joseph. The case of the appellant is that the respondent No.2 joined the services under the management of the society in the year 1985 at St. Joseph's Upper Primary School at Koilakuntla. She was transferred and posted as Headmistress at St. Joseph's Girls High School at Nellore. Later in the year 1989 she was again transferred and posted as Headmistress at Fathima Girls High School, Porumamilla, i.e., the appellant herein. At the relevant point of time, it is stated that respondent No.2 professed to be a sister of the Society of Jesus Mary and Joseph. According to the appellant, it is only the professed sisters of the society who are allowed to be appointed as head of the Institutions. However, it is stated that on 17.12.1994, respondent No.2 without applying leave, left the institution. She sent a letter dated 3.1.1995 and a telegram expressing her inability to come. There appears to have been some correspondence in between wherein she expressed her unwillingness to continue her religious life. Therefore, the appellant appointed Thomasamma as in-charge headmistress on 10.01.1995, which was confirmed on 23.01.1995 and proposals were sent for approval of her appointment to the Regional Joint Director (RJD), Kadapa through District Educational Officer (DEO). Thereupon, the Regional Joint Director (RJD) as per letter dated 1.5.1995 enquired with the District Educational Officer as to whether respondent No.2 went on leave or resigned. After considering the proposal sent in favour of sister Thomasamma, at this juncture one sister Anacleta and another went to the house of respondent No.2 at Kazipet, Warangal District and obtained resignation letter in writing, which were addressed to the appellant, Regional Joint

Director and the District Educational Officer. The Governing body of the society accepted the resignation on 18.05.1995 and a communication was sent to the second respondent on 20.5.1995 to the effect that her resignation was accepted and she was relieved of her duties with effect from 16.05.1995. The same was also informed to the Regional Joint Director through District Educational Officer. However, it was stated that respondent No.2 sent a letter on 17.5.1995 stating that she was forced to handover the resignation letter on 16.05.1995 by sister Anacleta and that the resignation letter was not given voluntarily. According to the appellant, the said letter was posted on 3.6.1995 and received by the appellant on 6.6.1995. The second respondent came to the school after summer vacation on 12.6.1995 along with followers of her husband. However, she was not taken into duty. The second respondent got married on 24.5.1995 and thereafter the second respondent approached the Regional Joint Director challenging the correctness of the resignation and the same was accepted which was challenged by the appellant in W.P.No.12054 of 1996. The said writ petition was allowed by this Court mainly on the ground that the appellant was not given an opportunity and the matter was remitted for fresh consideration. Subsequently, respondent No.1 passed the impugned order directing reinstatement of respondent No.2 with immediate effect.

The case of the appellant was to the effect that having regard to the resignation letter which was accepted, respondent No.2 cannot go back on that nor she is entitled to be taken back into service. Further, it is their case that having regard to the nature of institution where only professed sisters are allowed to hold the post and respondent No.2 having got married, she is not entitled to be posted or continued in such a post.

Contesting the appellant's claim, the entire allegations are sought to be denied and especially pointing out that the very resignation is not voluntary.

The learned single Judge after going through the respective contentions found that the letter sent by respondent No.2 was received on 6.6.1995 whereas the communication of the acceptance of the resignation was on 12.6.1995. Further, it was found that the conduct of the appellant would show that they were aimed at ousting the second respondent from the post of headmistress and it is only with that

view two persons were deputed all the way to Kazipet in Warangal District to procure a letter of resignation from the second respondent, which itself would show that the resignation is not voluntary. Further, there is discrepancy with reference to the date of acceptance of the resignation and the communication of the said acceptance of resignation. Ultimately, it was held that second respondent has withdrawn the letter of resignation before communication of its acceptance and therefore, the impugned order is perfectly valid. That apart, it was found that there is violation of Rule 163 of the A.P. (Integrated) Education Rules, 1966 requiring notice of three months for an employee to resign or to pay salary for the said period in lieu of the said notice, which is lacking.

With the findings as arrived at by the leaned single Judge categorically on these aspects apart from being factual one, prima facie, we are of the view that the same is not only supported by material on record but well laid reasons. The entire attack as made by the appellant in the writ petition virtually run on twin parallel lines contrary to each other. In one breath, the case of the appellant was that the second respondent resigned and in another breath, it is stated that the second respondent is not entitled to continue in the post since she got married and she is no longer a professed sister.

Admittedly, there is nothing on record to show that any action as such was taken either on ecclesiastic side to disqualify her from the society or any proceedings are initiated for her removal from the post on that ground. At no point of time, this plea was put against respondent No.2.

Further, coming to the theory of resignation, admittedly, the second respondent was away at Khajipet and there are no such compelling reasons on the part of the appellant to send any deputies to obtain resignation letter from the second respondent. If there is any such voluntary act on the part of the respondent No.2, it could have been sent either directly or presented before the appellant at the place of working. The very withdrawn letter send by respondent No.2 immediately would show that there was a protest in regard to the correctness of the resignation on the ground that the same was not taken voluntarily. There is also no explanation

forthcoming as to why the appellant had to send two deputies to obtain resignation letter from respondent No.2 nor any explanation forthcoming as to why notice is not given as contemplated under Rule 163 of the aforesaid Rules though it is contended that the said rule has no application.

Be that as it may, parallel arguments of resignation and disqualification due to marriage do not fit in the circumstances to show that there was any such either voluntary act of resignation or removal of the second respondent on such disqualification grounds. In view of the same, we do not find any merits in the above appeal and the same is accordingly dismissed. No costs.

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B.PRAKASH RAO, J

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G.YETHIRAJULU, J

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